Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75—372.

BRIAN O'DONNELL, KALMON YUDKOWSKY, RONALD D'ELIA, ROLAND GOZLAND, PATSY BARILE, JOSEPH FUCHS, ROBERT LANGELIUS, LEON J. GREENSPAN, CARL BOCHTERLE, EZRA BERKOWITZ, JEFFREY SILVERBUSH, LOUIS EHRENKRANZ, MARTIN TANNENBAUM,

Appellants,

against

ARTHUR A. ANTIN and WHITE PLAINS BOARD OF EDUCATION,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Appellants Reply to Motion to Dismiss or Affirm by Louis J. Lefkowitz, Attorney General of the State of New York, Intervenor *Pro Se*.

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Appellants,

against

Arthur A. Antin and White Plains Board of Education,

Appellees.

On Appeal from the Court of Appeals of the State of New York.

Appellants' Reply to Motion to Dismiss or Affirm by Louis J. Lefkowitz, Attorney General of the State of New York, Intervenor *Pro Se.*

The Attorney General of the State of New York, Intervenor *pro se,* has moved, pursuant to this Court's Rule 16, for the dismissal of this appeal for want of a substantial Federal or constitutional question, or that the judgment of the New York Court of Appeals be affirmed.

Appellants, pursuant to this Court's Rule 16(4) submits this brief in opposition to the aforesaid motion of the Attorney General of the State of New York.

ARGUMENT.

The distinction between non-city and city school districts as to their obligations to provide transportation under Education Law, §3635, is based on an unreasonable and irrational classification of school districts. It is therefore a denial of equal protection of the laws.

(I)

The Intervenor at §(1), page 4 of its brief, sets forth the proposition "If a statutory scheme or classification has a reasonable basis and a legitimate objective, it is not a denial of equal protection." Citing *San Antonio School District v. Rodriguez,* 411 U. S. 1 (1973) Reh. Den. 411 U. S. 959, as authority. Intervenor further states on page 5:

> "If a classification has a reasonable basis, it does not offend the constitution because it is not made with mathematical nicety or because in practice it results in some inequity."

Citing *Dandridge v. Williams,* 397 U. S. 471, 485 (1970). Appellants are in complete agreement with Intervenor as to the applicable rules.

San Antonio School District v. Rodriguez, Supra, and *Dandridge v. Williams, Supra,* involve the equal protection clause as to its limittaions, answering negatively whether or not strict scrutiny would apply so as to require a state to justify its particular law by showing a compelling state interest. Appellants herein appeal to this Court to look upon §3635 of the Education Law in the light of the circumstances and facts presented which evidence a clear showing of irrational, unreasonable and arbitrary basis upon which the classification in question is founded.

(II)

Intervenor next argues that the school districts set up by the state legislature "clearly reflect population densities of the various areas of the state."

In support of this argument, Intervenor cites:

> "State differentiation between its areas based on population density is a legitimate classification." *McGowan v. Maryland,* 366 U. S. 420 (1961).

It is appellants' position that the reasoning of the United States District Court of Rhode Island in the case of *Women's Liberation Union of Rhode Island, Inc. v. Israel,* 359 F. Supp. 44 (1974), aff'd 512 F. 2d (1st Cir. 1975) is more apt. The Court, at page 49 of 379 F. Supp. stated:

> "A review of recent Supreme Court decisions indicates that the highly differential 'rational basis' test applied by the court in the 1960's is being reshaped into a meaningful standard of review."

The Court then went on to discuss three specific areas of reform now taking place in this field. Finally, as to its third point, the Court stated at page 49 of 379 F. Supp.:

> "The Court in a number of instances, has abandoned the highly differential formulation of the 'rational basis' test, such has been expressed in *McGowan v. Maryland,* 366 U. S. 420, 426, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d 393 (1961), that a classification must be sustained 'if any state of facts reasonably may be conceived to justify it' and now demands that the classification bears substantial or significant relation to the objective it is claimed to further."

The current trend is to get away from the type of test which was used in *McGowan v. Maryland, Supra.* The Courts take a closer and more meaningful look at classification legislation. Intervenor, in its brief, is requesting this Court to following the example set down in *McGowan* and use a method of testing which is antiquated and rapidly giving way to a new and more meaningful standard of review.

(III)

Intervenor next, to convince this Court that in areas with greater population, there exists more extensive local transportation systems. Intervenor, however, fails to respond to the assertions made in the appellants' main brief that in the City of White Plains busing schedules are not correlated with the school schedules; nor does Intervenor discuss the logical offshoot of increased population, namely, increased traffic congestion. This increases the degree of danger to pedestrian school children despite the presence of traffic lights and other forms of traffic control devices. Intervenor also fails to present any proof contrary to the fact that there are many sections of smaller cities such as White Plains which contain no sidewalks, and are quite rural and residential. In addition, the brief of Intervenor ignores the fact that there are many sections of populated urban municipalities which are unsafe to walk through due to the crime situation in those areas, and that they are usually located in cities!

(IV)

Intervenor next argues that the distinction between city and non-city school districts is reasonable and relies on Article 1, Section 2(16) (a) of the State Education Law

cited on page 8 of its brief. The evidence is quite clear that by definition a city school district within the State of New York can and does overreach the municipal boundaries of the city. The statutory definition of the term "city school district" supports exactly the position presented by the appellants in their main brief before this Court.

While the essential component of a city school district is a city, the fact still remains that the statutory definition allows a city school district to overlap into the surrounding communities and, therefore, encompass certain portions of communities which, but for the fact that they had been encompassed within the city school district, would be afforded the opportunity to receive the benefits of mandatory transportation as dictated by the Education Law.

Further support for appellants' argument appears in the statistics set out by Intervenor drawn from the survey of enrollment, Staff and School Housing, Fall 1974, State Education Department, Page 3 of the 62 city school districts entirely within respective city boundaries. Intervenor concedes, as submitted by appellants, that the overlap of city school districts into the surrounding areas is quite prevalent in the State of New York.

On page 9 of its brief Intervenor points to the so-called enlarged school districts in support of its proposition that the statutory scheme is reasonable, stating on page 7:

> "Such enlarged school districts are required to furnish transportation to children residing outside the city limits to the school they attend within the city school district."

Such a classification provides transportation for children living outside geographical city limits. However, in a city school district—not so designated—the same child—not in the city—would get no transportation. No criteria are set forth from which we can rationally determine whether or not a city school district should be designated an enlarged city school district. Thus—not all city school districts with less than 175,000 population encompassing surrounding areas are so treated. Nowhere is transportation mentioned as one of the criteria for such a designation Education Law §1526. Only in §2503(12) do we find the cryptic distinction requiring transportation for non-city residents (though resident in the enlarged city school district). We thus have a distinction here based upon non-city residence as opposed to city residence. How do we square up this distinction with distinction with the non-city resident of the city school district not designated as an enlarged city school district? One gets transportation —the other does not! The rhyme, reason or rationality of such a scheme escapes counsel for appellants. Intervenor's assertion that the statutory scheme is rational does not make it so!

(V)

Intervenor in Section (3) at page 11 of its brief, claims manifest factual error in appellants' jurisdictional statement to this Court. Appellants assert that the statements set forth in their brief are accurate. This is proven by an examination of the attached information in Appendix A which consists of a map of the County of Westchester and a legend which is used to define the boundary lines of the various school districts in Westchester County published and produced by the County of Westchester—The Westchester County Association, Inc. Joint Information Study Program. The solid lines on this map indicate school district boundary lines which do not coin-

cide with municipal boundaries and that the dotted boundary lines represent school district boundary lines which do coincide with municipal boundaries. A quick review of this map will show that the school districts of the cities of Yonkers, Mt. Vernon, New Rochelle and White Plains all overlap. Intervenor concedes that the City School District of Rye does in effect overlap into the surrounding Town of Harrison and Village of Port Chester.

This matter is now placed before the Court as to which of the two sources relied upon by Intervenor and the appellants herein is correct in its determination of school district boundary lines. It should further be noted that the boundary lines which are drawn up on the attached map and any notations on that map were made by the County of Westchester. No markings or comments have been placed upon that map by the appellants.

(VI)

Intervenor finally states in Section (4) located at pages 11 and 12 of its brief that:

> "A statute which permits a city school district's board of education to decide whether, or how much, transportation should be provided to its students in the light of its budget, availability of public transportation, location of its schools and of the residences of the school population, is a reasonable one."

If such a right was also granted to non-city school districts and enlarged city school districts there would be no lawsuit. No rational basis for the granting or withholding of transportation within the statutory scheme of classification has been shown. The statute is unconstitutional.

Conclusion.

This appeal should be granted and the judgment below of the Court of Appeals of the State of New York should be reversed.

Dated: White Plains, New York,
October 6, 1975.

Respectfully submitted,

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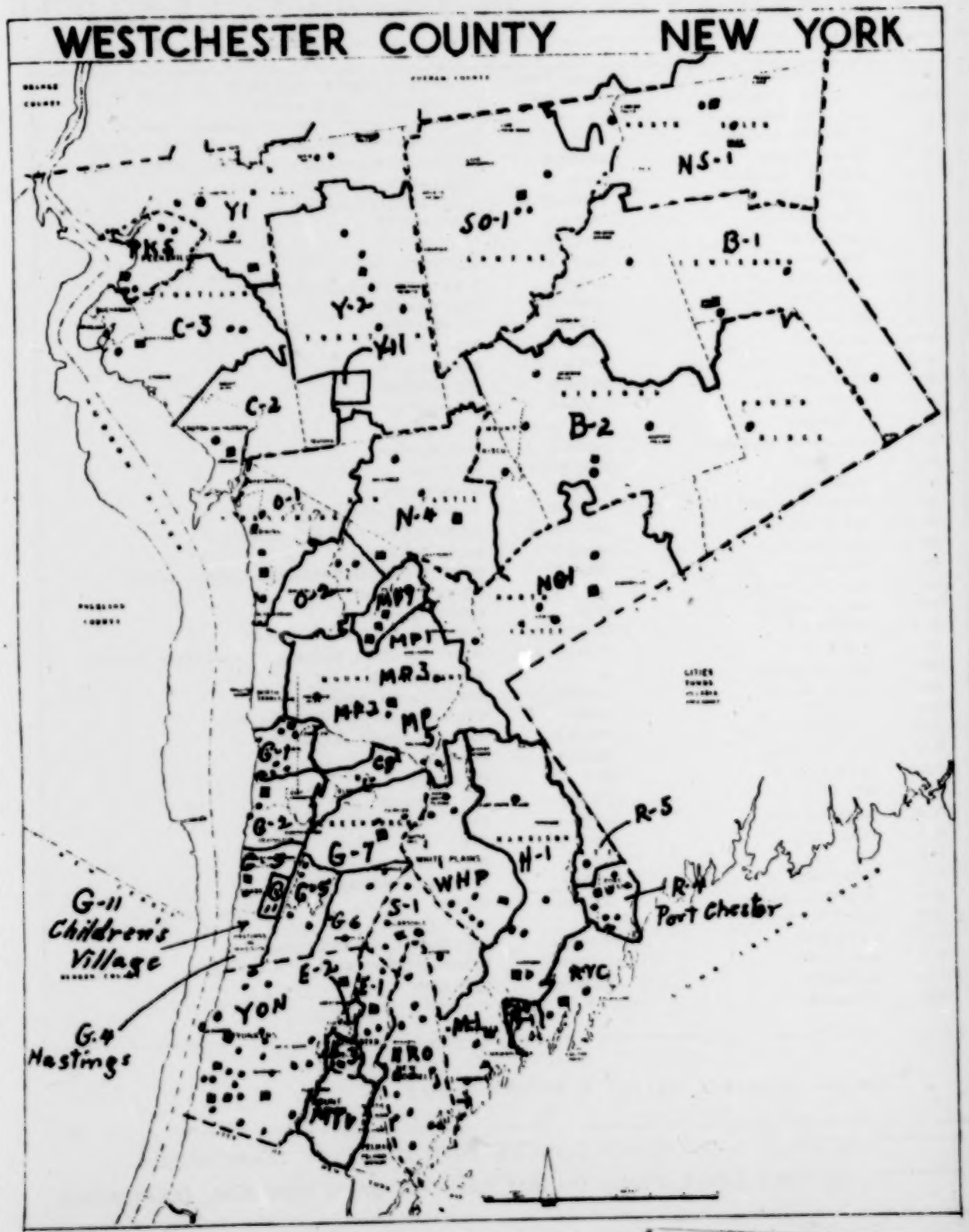

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SCHOOL DISTRICT IDENTIFICATION

MAP SYMBOL	COMMONLY USED NAME	DISTRICT TYPE AND NUMBER	CITIES & TOWNS INCLUDED (IN WHOLE OR IN PART)
B-1	KATONAH-LEWISBORO	UNION 1	BEDFORD, LEWISBORO, NORTH SALEM, POUND RIDGE
B-2	MOUNT KISCO	CENTRAL 2	BEDFORD, NEW CASTLE, POUND RIDGE, NORTH CASTLE
C-2	CROTON-HARMON	UNION 2	CORTLANDT, YORKTOWN
C-3	CORTLANDT CENTRAL	CENTRAL 3	CORTLANDT, PEEKSKILL
E-1	EASTCHESTER	UNION 1	EASTCHESTER
E-2	TUCKAHOE	UNION 2	EASTCHESTER
E-3	BRONXVILLE	UNION 3	EASTCHESTER
G-1	TARRYTOWN	UNION 1	GREENBURGH, MOUNT PLEASANT
G-2	IRVINGTON	UNION 2	GREENBURGH
G-3	DOBBS FERRY	UNION 3	GREENBURGH
G-4	HASTINGS	UNION 4	GREENBURGH
G-5	ARDSLEY	UNION 5	GREENBURGH
G-6	EDGEMONT	UNION 6	GREENBURGH
G-7	GREENBURGH	CENTRAL 7	GREENBURGH
G-9	ELMSFORD	UNION 9	GREENBURGH
G-11	CHILDREN'S VILLAGE	UNION 11	GREENBURGH
H-1	HARRISON	CENTRAL 1	HARRISON
M-1	MAMARONECK	UNION 1	MAMARONECK
MP-1	MOUNT PLEASANT	CENTRAL 1	MOUNT PLEASANT, NORTH CASTLE
MP-2	POCANTICO HILLS	CENTRAL 2	MOUNT PLEASANT, GREENBURGH
MP-3	HAWTHORNE KNOLLS	UNION 3	MOUNT PLEASANT
MP-5	VALHALLA	UNION 5	MOUNT PLEASANT, GREENBURGH, NORTH CASTLE
MP-9	PLEASANTVILLE	UNION 9	MOUNT PLEASANT
MTV	MOUNT VERNON	CITY	MOUNT VERNON
N-4	CHAPPAQUA	CENTRAL 4	NEW CASTLE, MOUNT PLEASANT
NC-1	BYRAM HILLS	CENTRAL 1	MOUNT PLEASANT, NO CASTLE, NEW CASTLE, BEDFORD
NRO	NEW ROCHELLE	CITY	NEW ROCHELLE
NS-1[B]	NORTH SALEM	CENTRAL 1	NORTH SALEM, SOMERS
O-1	OSSINING	UNION 1	OSSINING, NEW CASTLE, YORKTOWN
O-2	BRIARCLIFF MANOR	UNION 2	OSSINING, MOUNT PLEASANT
P-1	THE PELHAMS	UNION 1	PELHAM
PKS	PEEKSKILL	CITY 1	PEEKSKILL
R-1	RYE NECK	UNION 1	RYE, RYE CITY
R-4	PORT CHESTER	UNION 4	RYE
R-5	RIDGE STREET	UNION 5	RYE
RYC	RYE CITY	CITY	RYE CITY
S-1	SCARSDALE	UNION 1	SCARSDALE, MAMARONECK
SO-1	SOMERS CENTRAL	CENTRAL 1	SOMERS
WHP	WHITE PLAINS	CITY	WHITE PLAINS
Y-1[B]	LAKELAND	CENTRAL 1	YORKTOWN, CORTLANDT, SOMERS
Y-2	YORKTOWN	CENTRAL 2	YORKTOWN, CORTLANDT, NEW CASTLE
Y-11	WILTWYCK	UNION 11	YORKTOWN
YON	YONKERS	CITY	YONKERS

[B] PORTION OF SCHOOL DISTRICT IN PUTNAM COUNTY

---- DISTRICT LINES WHICH COINCIDE WITH MUNICIPAL BOUNDARIES

——— DISTRICT LINES WHICH DO NOT COINCIDE WITH MUNICIPAL BOUNDARIES

○ ELEMENTARY SCHOOL ▯ HIGH SCHOOL